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TIR 12-10: Effect of Recent Legislation on the Personal Income Tax, the Corporate Excise, and Tax Administration

This Technical Information Release (TIR) explains provisions in recent legislation relating to the personal income tax, G.L. c. 62, the corporate excise, G.L. c. 63, and tax administration, G.L. c. 62C. The legislation discussed in this TIR includes:

- An Act Improving the Quality of Health Care and Reducing Costs through Increased Transparency, Efficiency and Innovation (Health Care Act),[\[1\]](#)
- An Act Relative to Infrastructure Investment, Enhanced Competitiveness and Economic Growth in the Commonwealth (Jobs Act),[\[2\]](#)
- An Act Making Appropriations for the Fiscal Year 2013 (the Fiscal Year 2013 Budget),[\[3\]](#) and
- An Act Making Appropriations for the Fiscal Year 2012 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects (Supplemental Budget).[\[4\]](#)

I. Employer Wellness Program Credit; Personal Income Tax and Corporate Excise

The Health Care Act establishes a Wellness Program Tax Credit that is effective for tax years beginning on or after January 1, 2013 and is set to expire on December 31, 2017.[\[5\]](#)

Purpose of the Employer Wellness Program Credit. The Employer Wellness Program Credit is an element of the most recent amendments to the Massachusetts health care reform legislation. The purpose of the Employer Wellness Program Credit is:

... to provide incentives for business to recognize the benefits of wellness programs. Wellness programs implemented by business have resulted in both savings to their premiums as well as overall savings to the cost of health care. The goal of this tax credit is to provide smaller businesses with an expanded opportunity to implement these programs.[\[6\]](#)

Taxpayers Who May Claim the Credit. The credit is available to both chapter 62 and chapter 63 taxpayers.[\[7\]](#)

Certification. The Department of Public Health will determine standards for an Employer Wellness Program that will qualify for the credit. A business will apply to the Department of Public Health describing the proposed wellness program to be implemented by the business and providing an estimated budget and applicable taxpayer identification number. The Department of Public Health will approve a dollar amount of credit for a qualifying taxpayer and issue a certificate to be filed with the appropriate tax return.

Amount of the Credit. The credit is equal to 25 percent of the costs associated with implementing a "certified wellness program." The maximum amount of Employer Wellness Program Credits available to a taxpayer pursuant to G.L. c. 62, § 6N or G.L. c. 63, § 38FF is \$10,000 in any tax year.[\[8\]](#)

Total Amount of Credits Authorized. The total amount of Employer Wellness Program Credits authorized by the Department of Public Health is subject to a \$15,000,000 annual cap.

Regulations. The Department of Public Health and the Department of Revenue will develop regulations and procedures to implement the Employer Wellness Program Credit.

II. Community Investment Credit; Personal Income Tax and Corporate Excise

The Jobs Act provides a Community Investment Tax Credit that is effective January 1, 2014 and is set to expire December 31, 2019.[\[9\]](#)

Purpose of the Community Investment Credit. The purpose of the Community Investment Credit is:

... to enable local residents and stakeholders to work with and through community development corporations to partner with nonprofit, public and private entities to improve economic opportunities for low and moderate income households and other residents in urban, rural and suburban communities across the commonwealth.[\[10\]](#)

Taxpayers Who May Claim the Credit. The credit is available to both chapter 62 and chapter 63 taxpayers.[\[11\]](#)

Certification. The Department of Housing and Community Development will issue a certification to a taxpayer after the taxpayer makes a qualified investment. The certification will be acceptable as proof that the expenditures related to such investment constitute qualified investments for purposes of the community investment credit.

Amount of the Credit. The Community Investment Credit is equal to 50 percent of the total qualified investments made by a taxpayer in a "community partner," *i.e.*, a "community development corporation" or a "community support organization," selected by the Department of Housing and Community Development through a competitive process. A qualified investment must be in the form of a cash contribution of at least \$1,000. A taxpayer may invest in more than one community partner, but may not claim more than \$1,000,000 of credits in any single taxable year. A taxpayer must claim the credit in the taxable year in which a qualified investment is made.

Total Amount of Credits Authorized. The total amount of Community Investment Credits authorized by the Department of Housing and Community Development is subject to a \$3,000,000 cap in 2014, and an annual cap of \$6,000,000 in 2015 to 2019, inclusive.

Regulations. The Department of Housing and Community Development and the Department of Revenue will develop regulations and procedures to implement the Community Investment Credit.

III. Domicile; Personal Income Tax

The Fiscal Year 2013 Budget amends the personal income tax to provide that charitable contributions in the form of cash or property that qualify for federal income tax deductions will not be considered to determine domicile in the Commonwealth or any other jurisdiction.

Under the personal income tax, both residents and non-residents of the Commonwealth are liable for taxes on personal income. Residents are generally taxed on their world-wide income, but non-residents are taxed only on income derived from or connected to sources in Massachusetts. [\[12\]](#)

General Laws c. 62, § 1(f) provides that a "resident" or "inhabitant" is (1) any natural person domiciled in the commonwealth, or (2) any natural person who is not domiciled in the Commonwealth but who maintains a permanent place of abode in the Commonwealth and spends in the aggregate more than 183 days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth. [\[13\]](#)

Under clause (1) of § 1(f), a person who is domiciled in Massachusetts is considered a resident of Massachusetts. "Domicile" is the place which is an individual's true, fixed and permanent home, determined by established common law principles and the facts and circumstances in each case. [\[14\]](#) A domicile determination is largely a factual determination that takes into consideration many factors relating to a person's social, economic and political life. In order to determine a taxpayer's domicile, all the factual circumstances connected to the taxpayer's major life interests, including family relations, business connections, social activities, and health care are examined.

Under the Fiscal Year 2013 Budget, for personal income tax purposes, qualifying charitable contributions cannot be examined to determine a person's domicile in Massachusetts or any other jurisdiction. [\[15\]](#) Effective July 8, 2012, the Fiscal Year 2013 Budget amends c. 62, § 1(f) to provide:

For purposes of clause (1), the making of a financial contribution, gift, bequest, donation or any other financial instrument or pledge in any amount or the donation or loan of any object of any value, or any combination of the foregoing, qualifying for deduction as a charitable contribution under section 170 (a) of the Code to any corporation, foundation, organization or institution, which is exempt from taxation under section 501(c)(3) of the Code, shall not be used in any manner to determine domicile in the commonwealth or any other jurisdiction. [\[16\]](#)

Under IRC § 170(a), qualifying charitable contributions include gifts of cash or property. Under § 1(f), as amended, contributions of cash or property to any organization which is exempt from taxation under IRC § 501(c)(3) are excluded from a determination of domicile to the extent that such contributions qualify for a federal income tax deduction under IRC § 170(a).

Where and how an individual spends his time is a primary factor considered in a domicile determination. The value of volunteering or donation of uncompensated services to a charitable organization does not qualify as a charitable deduction under IRC § 170(a). Thus, the facts and circumstances of a person's services to a charitable organization are considered in determining domicile.

IV. FAS 109 Deduction; Corporate Excise

A "FAS 109" [\[17\]](#) deduction was approved for certain publicly held companies as part of a Massachusetts tax law change that, among other things, lowered the corporate tax rate in stages and adopted combined reporting for tax years beginning on or after January 1, 2009. [\[18\]](#) In general, if the enactment of combined reporting requirements for unitary businesses resulted in an increase to a combined group's net deferred tax liability, the combined group is eligible to claim a FAS 109 deduction. [\[19\]](#)

The Fiscal Year 2013 Budget delays by an additional year the implementation of the FAS 109 deduction. Under prior law, if applicable, the FAS 109 deduction was to be prorated over the 7-year period beginning with the combined group's taxable year that begins in 2013. Under the Fiscal Year 2013 Budget, the first year of the 7-year period to claim the FAS 109 deduction is the combined group's taxable year that begins in 2014. [\[20\]](#)

V. Technical Correction, Applications for Abatement and Refunds; G.L. c. 62C, §§ 36 and 37

The Supplemental Budget includes a technical correction to G.L. c. 62C, § 36 relating to the statute of limitations on refunds resulting from an application for abatement.

In 2011, the Fiscal Year 2012 Budget amended parts of G.L. c. 62C, §§ 36 and 37 dealing with the requirements for requests for refunds and applications for abatement, and certain limitations on the amount of refunds. [\[21\]](#) In particular, the Fiscal 2012 Budget amended § 36 of c. 62C by inserting as the fifth sentence of the third paragraph:

Where a refund or credit results from an abatement under section 37, the amount of such refund or credit shall be limited to the amount paid, or deemed paid pursuant to section 79, within 3 years of the date that the application for abatement is filed, taking into account any extension of time for filing the return.

This amendment did not address the situation where a taxpayer files an application for abatement after the taxpayer has agreed with the Department to extend the statute of limitations for assessment of tax.^[22] As a result, there could have been an inadvertent limitation on refunds where a taxpayer voluntarily signs a waiver of the statute of limitations for assessment, and then, subsequent to the close of audit, the taxpayer files an application for abatement seeking a refund.^[23] Under the amendment cited above, even though a taxpayer timely filed an application for abatement, the amount of refund available could be zero (because the refund is limited to amounts paid within 3 years of the date that the application for abatement is filed, taking into account any extension of time for filing the return).

Accordingly, the Supplemental Budget provides a technical correction to the recent changes to the third paragraph of G.L. c. 62C, § 36 by inserting after the fifth sentence the following:

Notwithstanding the preceding sentence and any contrary provision of section 27, where the commissioner and the taxpayer have agreed to extend the period for assessment of a tax pursuant to section 27, the amount of any refund or credit, whether determined by the commissioner to be an overpayment pursuant to section 27 or claimed by the taxpayer pursuant to a timely filed application for abatement, shall not exceed the amount of the tax paid after the execution of the agreement and before the expiration of the agreed extension period or periods plus the amount of the tax paid which would otherwise be eligible for refund under this section if an application for abatement had been filed on the date the agreement was first executed.^[24]

The new provision applies to requests for refund or applications for abatement filed with the Commissioner of Revenue on or after July 1, 2011; but it does not apply with respect to tax periods where the statute of limitations for refund or abatement, as applicable, had expired before July 1, 2011. ^[25]

/s/Amy Pitter
Amy Pitter
Commissioner of Revenue

AP:MTF:adh

December 12, 2012

TIR 12-10

^[1] St. 2012, c. 224.
^[2] St. 2012, c. 238.
^[3] St. 2012, c.139.
^[4] St. 2012, c. 239.
^[5] St. 2012, c. 224, § 41 adding G.L. c. 62, § 6N; St. 2012, c. 224, § 56 adding G.L. c. 63, § 38FF; for effective dates see St. 2012, c. 224, §§ 41A, 56A, 297, and 298.
^[6] G.L. c. 62, § 6N(a); G.L. c. 63, § 38FF(a).
^[7] G.L. c. 62, § 6N(b); G.L. c. 63, § 38FF(b).
^[8] G.L. c. 62, § 6N(b); G.L. c. 63, § 38FF(b).
^[9] St. 2012, c. 238, § 29 adding G.L. c. 62, § 6M; St. 2012 c. 238, § 35 adding G.L. c. 63, § 38EE; for effective dates see St. 2012, c. 238, §§ 30, 36.
^[10] G. L. c. 62, § 6M(a); G.L. c. 63, § 38EE(a).
^[11] G.L. c. 62, § 6M(b); G.L. c. 63, § 38EE(b).
^[12] G.L. c. 62, §§ 2, 5A.
^[13] G.L. c. 62, § 1(f).
^[14] 830 CMR 62.5A.1(2), Non-resident Income Tax.
^[15] The amendment to G.L. c. 62, § 1(f) is generally consistent with the Department's guidance stated in TIR 90-5, Massachusetts Treatment of Charitable contributions in Domicile Cases.
^[16] St. 2012, c. 139, § 86 amending G.L. c. 62, § 1(f), effective July 8, 2012.
^[17] The Statement of Financial Accounting Standards No. 109 ("FAS 109"), "Accounting for Income Taxes," requires that the effects of income taxes be reported on an entity's financial statements for current and future years.
^[18] St. 2008, c. 173, § 95.
^[19] In order to claim a FAS 109 deduction, a taxpayer must have met the July 1, 2009 electronic filing requirement stating the amount of the FAS 109 deduction to be claimed in future years. See TIR 09-8 and TIR 11-6.
^[20] St. 2012, c. 139, § 140, amending St. 2008, c. 173, § 95.
^[21] St. 2011, c. 68, § 67 amending G.L. c. 62C, § 36, and St. 2011, c. 68, § 68 amending G.L. c. 62C, § 37. See TIR 11-6, *Tax Changes Contained in the Fiscal Year 2012 Budget*.
^[22] Under G.L. c. 62C, § 27, the taxpayer and the Department may agree to extend the statute of limitations for assessment of tax.
^[23] In the case of an application for abatement after an extension of the statute of limitations for assessment, G.L. c. 62C § 37 provides that "the period for abatement or for abating such tax shall not expire prior to the expiration period within which an assessment may be made pursuant to such agreement or any extension thereof; . . ."
^[24] St. 2012, c. 239, § 11 amending G.L. c. 62C, § 36 (third paragraph).
^[25] St. 2012, c. 239, § 56.

